

INFRASTRUCTURE COMMITTEE MEETING

6:00 P.M.

Monday September 22, 2014

HAMPDEN TOWN OFFICE

A G E N D A

1. MINUTES OF 8/25/2014
2. OLD BUSINESS
 - A. Update - Cemetery Maintenance Costs - 2014
3. NEW BUSINESS
 - A. Review Snowmobile Club lease – direction for renewal
 - B. Review Kiwanis Club Lease – direction for renewal
4. PUBLIC COMMENTS
5. COMMITTEE MEMBER COMMENTS

INFRASTRUCTURE COMMITTEE MEETING
Monday August 25, 2014

Attending:

Councilor David Ryder	Mayor Carol Duprey
Councilor William Shakespeare	Town Manager Susan Lessard
Councilor Tom Brann	Resident Terry McAvoy
Councilor Ivan McPike	
Councilor Jean Lawlis	

The meeting was opened at 6 p.m. by Chairman Ryder.

1. MINUTES OF 7/28/2014 – Motion by Councilor Brann, seconded by Councilor McPike to approve the minutes. Unanimous vote in favor.
2. OLD BUSINESS - None
3. NEW BUSINESS
 - A. Lighting of Town Buildings – Councilor Shakespeare – Councilor Shakespeare discussed the idea of determining how much could be saved by converting existing town buildings to more energy efficient lighting. Other Committee members agreed that having electrical energy audits done of each Town building would provide a way to determine the cost/payback time for alternate lighting options. It was the consensus of the Committee that the Town Manager should pursue having electrical energy audits done of each town building and bring the results to the Infrastructure Committee for review. Public comment was received by resident Terry McAvoy who indicated that the Town should investigate having Emera change street lights to LED as a means of saving money.
 - B. Adding Electrical Inspections to Town Permitting – Councilor Shakespeare – Councilor Shakespeare discussed the idea of adding electrical inspections to the list of items that are inspected by the Town as part of a building permit. He had concerns that the public is not well protected when a homeowner who is untrained can do their own wiring and he also indicated that most other communities with zoning in the area all also require an electrical permit. Other Committee members considered that since the installation of any wiring as part of a building project is required to have, at a minimum, a sign off by a Master Electrician that that should be sufficient without adding more cost to residents. The Town Manager indicated that the majority of the inspections conducted by the Town as part of the building process were related to items done by contractors that are not licensed or regulated by the State of Maine, which is not the case for electricians in Maine. Questions related to revenue that could be collected from permit fees was also discussed. It was the consensus of the group to leave the electrical inspection process for the Town the way it currently stands. Terry McAvoy commented that the Town should leave the process as is.
4. PUBLIC COMMENTS – Terry McAvoy commented that when he was at the Transfer Station last weekend there were several vehicles parked at the Swap Shop that did

not have current transfer station decals. It was noted that the Town now issues Swap Shop paper permits which go on the dash and not on the window which could have accounted for some of what occurred.

5. COMMITTEE MEMBER COMMENTS

Councilor Shakespeare expressed concerns over the reduced staffing at the transfer station on demo collection weekends. One employee has to stay in the building to push the three compactor buttons when necessary and keep an eye on disposal in those areas and the other to assist residents with disposal, keep the areas policed and assist with recycling and the swap shop areas.

Councilor Ryder asked how many people were working on the cemetery crew. The Town Manager told him she would find that out and report back.

The meeting was adjourned at 6:50 p.m.

Respectfully submitted,

Susan Lessard
Town Manager

3 A & B

TO: Hampden Town Council
FROM: Sue Lessard, Town Manager
DATE: September 18, 2014
RE: Lease Renewals – Kiwanis and Snowmobile Club

The purpose of this memo is to introduce the two items on the agenda related to lease renewals. Both of these leases are currently expired. At the times that they have been discussed over the past year, there has been some disagreement over the terms of a new agreement.

I have invited representatives from both organizations to the meeting in the hopes that a discussion between the Committee and the organizational reps can help to provide some direction for the renewal of these leases.

LEASE AGREEMENT

LEASE AGREEMENT dated this 7th day of April, 2003, between Town of Hampden, a Maine municipality with a place of business in Hampden, Maine ("Landlord"), and Goodwill Riders, a Maine nonprofit corporation with a place of business in Hampden, Maine, ("Tenant").

1. LEASE OF PROPERTY; TERM OF LEASE.

(a) Landlord, for and in consideration of the rents to be paid and of the covenants and agreements hereinafter contained to be kept and performed by Tenant, hereby leases to Tenant, and Tenant hereby hires from Landlord, the land, together with buildings and improvements thereon, situated at 842 and 844 Western Avenue, Hampden, Maine, being a portion of Landlord's land depicted on Tax Map 8 as Lot 11A. The leased premises includes the so-called fire station building and the clubhouse building currently occupied by Tenant, as well as the appurtenant driveway(s) and parking area(s), all of which shall be referred to as the "premises."

(b) The term of this Lease shall be for a period of five (5) years, commencing on April 1, 2003 and ending on March 31, 2008, both dates inclusive, unless sooner terminated, as herein provided.

2. RENT.

(a) During the term of this lease, Tenant covenants and agrees to pay to Landlord, in advance, without demand, setoff, or reduction of any kind, annual rent in the amount of One Dollar (\$1.00).

3. PAYMENT OF ASSESSMENTS, UTILITY CHARGES, ETC.

(a) Tenant shall timely pay all charges for electricity, water, sewer, and all other public and private utility service or services furnished to or for the benefit of the premises during the term.

(b) Tenant shall also pay all costs, fees, and expenses associated with the use and maintenance of the premises.

(c) Tenant shall, at its sole cost and expense, sufficiently heat the premises to protect against freeze ups and damage to the buildings.

4. USE, MAINTENANCE, ALTERATIONS, REPAIRS, ETC.

(a) Tenant has leased the premises after a full and complete examination thereof, as well as its present uses and non-uses. Tenant accepts the premises without any representation or warranty, express or implied, in fact or by law, by Landlord and without recourse to Landlord as to the nature, condition, or suitability thereof, or the use or uses to which the premises or any part thereof may be put.

(b) Throughout the term, Landlord shall not be required to furnish any services or facilities, nor to make any repairs or alterations, in or to the premises. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the entire premises.

(c) Tenant shall, at its sole cost and expense, at all times throughout the term, take good care of the premises and make all repairs necessary thereto in order to maintain and/or restore all buildings and improvements on the premises at least to the extent of their value at the time of maintenance and/or restoration, and as far as practicable to their original quality and character, as existed immediately prior to the occurrence necessitating the repairs, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, and foreseen or unforeseen. Further, Tenant shall maintain and keep the premises in good order, repair and condition. The foregoing obligation of Tenant is absolute, regardless of whether the repair could be characterized as routine maintenance or a capital repair.

(d) Only upon obtaining the prior written consent of Landlord, Tenant may, at its sole cost and expense, make additions, alterations, and changes in and to the premises, provided that Tenant is not then in default in the performance of any of Tenant's covenants, obligations, duties, or agreements in this Lease. All erections, alterations, additions, and improvements, whether temporary or permanent in character, which may be made upon the premises by any person, except only the placement thereon of furniture, moveable trade fixtures, and moveable machinery or equipment of Tenant, shall become the property of Landlord and shall remain upon and be surrendered with the premises as part thereof at the termination of this Lease without any compensation whatsoever to Tenant or to anyone else.

(e) Tenant's use of the premises shall be as a snowmobile club.

5. INDEMNIFICATION OF LANDLORD.

(a) After commencement of this lease, Landlord shall not be responsible or liable for any damage or injury to any property or to any one or more persons at any time on or about the premises arising from any cause whatsoever after the commencement of this lease. Tenant shall not hold Landlord in any way responsible or liable therefor, and hereby releases and remises Landlord therefrom. Tenant shall defend, indemnify and hold Landlord harmless from and against (i) any and all claims, liabilities, penalties, damages, expenses and judgments arising from injury to persons or property of any nature in or upon the premises and (ii) any and all of the foregoing arising from Tenant's occupation of, and its conduct of activities upon, the premises.

6. INSURANCE.

(a) During the term, Tenant shall, at its sole cost and expense, and for the benefit of the Landlord, carry and maintain fire and extended coverage insurance covering the premises against loss or damage by fire and against loss or damage by other risks now or hereafter embraced by

"extended coverage", so-called, in an amount equal to current replacement costs of all improvements and buildings on the premises, and shall name Landlord and Tenant as loss payees as their interests may appear.

(b) During the term, Tenant shall, at its sole cost and expense, and for the benefit of Landlord, carry and maintain comprehensive public liability insurance, including property damage, insuring Landlord and Tenant against liability for injury or damage to persons or property occurring in or about the premises or arising out of the ownership, maintenance, or use or occupancy thereof. The liability under such insurance shall not be less than: (i) \$1,000,000.00 for any one person injured or killed, (ii) \$1,000,000.00 for any one accident, and (iii) \$100,000.00 for personal property damage per accident.

(c) All policies of insurance (except liability insurance) carried or maintained hereunder shall provide by endorsement that any loss shall be payable to Landlord and Tenant as their respective interest may appear. All such insurance shall be in a form, and maintained with carriers, satisfactory to Landlord.

(d) All policies of insurance carried or maintained hereunder shall contain an agreement by the insurer that each such policy shall not be cancelled without at least 10 days prior written notice to Landlord and Tenant.

(e) Tenant shall annually deliver to Landlord evidence of the above mentioned insurance coverage satisfactory to Landlord. Upon Tenant's failure to comply in full with this paragraph 6, Landlord shall have the immediate right to: (i) obtain the aforesaid insurance coverage, (ii) pay the premium therefor, and (iii) collect the amounts paid for the premium from Tenant.

7. DAMAGE OR DESTRUCTION.

(a) If, at any time during the term, the buildings or improvements on the premises shall be wholly or partially damaged or destroyed by fire or other casualty (including any casualty for which insurance coverage was not provided) of any nature whatsoever, regardless of whether said damage or destruction resulted from an act of God, the fault of Tenant, or from any other cause whatsoever, except those caused by Landlord, its agents or employees, and Landlord determines that it is in its best interests to have the same repaired or reconstructed, then Tenant shall promptly repair or reconstruct the damage or destroyed buildings and improvements on the premises at least to the extent of the value at the time the damage or destruction was suffered, and as far as practicable, to their original quality and character, of all such buildings and improvements as in existence immediately prior to the damage or destruction. Such repair or construction shall be made in accordance with plans and specifications therefore which shall first be submitted to, and approved in writing by, Landlord prior to commencement of any repair or reconstruction, which approval shall not be unreasonably withheld.

(b) All insurance money collected by Tenant and/or Landlord from any policy of insurance on account of such damage or destruction, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (herein sometimes referred to as the "insurance proceeds") shall be applied to the cost of repair or reconstruction of the premises, unless Landlord decides that repair or reconstruction is not in its best interests, in which event the insurance proceeds for the repair or reconstruction shall be paid to Landlord. Provided, however, that Tenant shall be reimbursed for its expense for materials it may have provided during the term of this lease to improve or alter, but not to repair, the buildings.

8. ASSIGNMENT; SUBLETTING.

(a) Tenant shall not assign, mortgage, pledge, hypothecate, encumber, or in any manner transfer this Lease, any portion thereof, or any interest therein, nor sublease all or any portion of the premises, without the prior written consent of Landlord.

(b) In the event of any voluntary or involuntary bankruptcy, arrangement, plan of reorganization, assignment for the benefit of creditors, or other insolvency or related proceeding filed, instituted, or conducted by, against, or otherwise on behalf of or regarding Tenant, the leasehold created hereby shall not be assigned in whole or in part nor the premises sublet, in whole or in part, nor shall either this leasehold or the premises be otherwise conveyed or transferred in whole or in part, to any party.

9. DEFAULT PROVISIONS.

The occurrence of any of the following events shall constitute a default under this Lease:

(a) Tenant shall fail to make full and timely payment of any rent or any other sum payable by Tenant to Landlord, and such failure continues for a period of 15 days after written notice by Landlord to Tenant as per paragraph 15 herein.

(b) Tenant shall fail to perform or observe any covenant, term or condition of this Lease to be performed or observed by Tenant, and such failure continues for a period of 30 days after written notice by Landlord to Tenant as per paragraph 15 herein (other than regarding defaults covered by sub-paragraph (a) hereof).

(c) Tenant shall cause or permit the premises to become vacant or abandoned for any period of time whatsoever.

10. LANDLORD'S REMEDIES.

Upon the occurrence of an event of default specified in paragraph 9 hereof, Landlord may, at its option, exercise any one or more of the following remedies:

(a) Landlord may give Tenant a notice of its intention to terminate this Lease, specifying a date not less than 30 days thereafter, upon which date this Lease, the term and estate hereby granted, and all rights of Tenant hereunder shall expire and terminate. Notwithstanding the foregoing: (i) Tenant shall remain liable for damages as hereinafter set forth, and (ii) Landlord may institute dispossession proceedings for non-payment of rent, distraint, or other proceedings to enforce the payment of rent. Upon such termination or expiration of this Lease, Tenant shall peaceably quit and surrender the premises to Landlord, and Landlord may without further notice enter upon, re-enter, possess, and repossess itself thereof, by force, summary proceedings, ejectment, or otherwise and may have, hold, and enjoy the premises.

(b) Landlord may, at Landlord's sole option (without imposing any duty upon Landlord to do so), and Tenant hereby authorizes and empowers Landlord to: (i) re-enter the premises on Tenant's account, for Landlord's own account or otherwise, (ii) relet the same for any term, (iii) remodel the same if necessary or desirable for such reletting purposes, and (iv) receive and apply the rent so received to pay all fees and expenses incurred by Landlord as a result of such default, including without limitation any legal fees and expenses arising therefrom, the costs of re-entry, repair, remodeling and reletting, and the payment of the rent, and other charges due hereunder. No entry, re-entry, or reletting by Landlord, whether by summary proceedings, termination, or otherwise, shall discharge Tenant from any of its liability to Landlord as set forth in this Lease.

(c) Tenant shall be liable for all costs, charges and expenses, including without limitation attorney's fees and disbursements, incurred by Landlord by reason of the occurrence of any default or the exercise of the Landlord's remedies with respect thereto.

11. LANDLORD'S RIGHT TO PERFORM; WAIVERS; ATTORNEY'S FEES.

(a) If the Tenant shall fail to make any payment required to be made under this Lease, or shall default in the performance of any covenant, agreement, term, provision, or condition herein contained, Landlord may 30 days after written notice as per paragraph 15 herein, without being under any obligation to do so and without thereby waiving such default, make such payment and/or remedy such other default for the account and at the sole expense of Tenant. Tenant shall pay to Landlord, on demand, the amount of all sums so paid and all expenses so incurred by Landlord.

(b) Landlord may restrain any breach of any covenant, agreement, term, provision, or condition herein contained. No term of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing, signed by Landlord or its agent fully authorized in writing. Receipt or acceptance of rent by Landlord shall not be deemed a waiver of any default under this Lease, nor of any right Landlord that may be entitled to exercise under this Lease.

(c) In the event of any default by Tenant under this Lease, Landlord shall be entitled, in addition to any other rights and remedies hereunder, to be reimbursed by Tenant for attorney's fees incurred by Landlord in the exercise of its rights and remedies.

12. EXPIRATION OF LEASE.

Upon the expiration of the term, or the sooner termination hereof:

(a) Tenant shall peaceably and quietly leave, surrender, and yield up unto Landlord the entire premises free of occupants. Any removable property of Tenant which shall remain in or upon the Premises after the expiration of the term or sooner termination thereof and the removal of

Tenant from the premises may, at the option of the Landlord, be deemed to have been abandoned, and may be either retained by Landlord as its property or disposed of in such manner as Landlord may in its sole discretion deem appropriate; and (b) If Tenant shall remain in the premises such holding over shall not constitute a renewal or extension of this Lease. Landlord may, at its sole discretion, elect to: (i) treat Tenant as one who has not removed at the end of its term, or thereupon be entitled to all remedies against Tenant provided for by law or under this Lease regarding such situation; or (ii) construe such holding over as a tenancy at will, subject to all the terms and conditions of this Lease except the duration thereof.

13. SUCCESSORS AND ASSIGNS.

Except as otherwise provided in this Lease, this Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns.

14. ENTIRE AGREEMENT.

This Lease contains the entire agreement between the parties, supersedes all prior negotiations and understandings among them, and shall not be altered or amended except by written agreement signed by Landlord and Tenant.

15. NOTICES.

All notices, demands, and other communications hereunder shall be in writing, by certified mail, return receipt requested, and shall be sent to the following addresses:

To Landlord by mailing to:

Susan Lessard, Town Manager
Town of Hampden
106 Western Avenue
Hampden, ME 04444

To Tenant by mailing to:

Bill Hall
717 Western Avenue
Hampden, ME 04444

16. GOVERNING LAW.

This Lease shall be governed by and construed in accordance with the laws of the State of Maine.

17. COUNTERPARTS.

This Lease may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which taken together shall constitute one agreement binding on all parties hereto, notwithstanding that the parties shall not have signed the same counterpart.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

TOWN OF HAMPDEN

Katherine A. Case
Witness

By Susan Lessard
Susan Lessard
Its Town Manager

GOODWILL RIDERS

Robert Stubb
Witness

By Bill Hall
Name: Bill Hall
Title: Club President

LEASE AGREEMENT

AGREEMENT OF LEASE made this 17th day of March, 1983, by and between the INHABITANTS OF THE TOWN OF HAMPDEN, a municipal corporation situated in Penobscot County and State of Maine (hereinafter Lessor), and The KIWANIS CLUB OF HAMPDEN, a corporation without capital stock located in Hampden, County of Penobscot and State of Maine (hereinafter Lessee).

RECITALS

1. Lessor is the sole owner of the premises described as Parcel Two in the deed of School Administrative District No. 22 to The Inhabitants of the Town of Hampden, dated April 20, 1969, recorded in the Penobscot Registry of Deeds, Vol. 2183, Page 31 (the demised premises), and desires to lease the premises to a suitable lessee.

2. Lessee desires to lease the subject premises for the purposes to which its charter is dedicated, being all non-profit purposes.

3. The parties hereto desire to enter into a lease agreement defining their rights, duties and liabilities relating to the premises.

Therefore, in consideration of the mutual covenants contained herein, the parties agree as follows:

SECTION ONE
SUBJECT AND PURPOSE

Lessor leases the land and buildings situated in Hampden, Maine, as described hereinabove, to Lessee for the purposes to which its charter is dedicated, to wit: activities of a civic, social, educational, and otherwise non-profit nature.

SECTION TWO
TERM AND RENT

Lessor demises the subject premises to Lessee for a term of twenty-five (25) years, commencing June 1, 1983 and terminating twenty-five (25) years thereafter, to wit: May 31, 2008, at the annual rental rate of One Dollar (\$1.00). Rental payments shall be due and payable on the first day of June each year.

SECTION THREE
ALTERATIONS, ADDITIONS AND IMPROVEMENTS

Subject to the limitation that no substantial portion of the demised premises shall be demolished or removed by Lessee without the prior consent of Lessor, Lessee may, at its own expense, make any alterations, additions or improvements in and to the demised premises. All alterations, additions and improvements shall be performed in a workmanlike manner.

All alterations, additions and improvements on or in the demised premises at the commencement of the lease term, and that may be erected or installed during the term shall, except as otherwise provided herein, become part of the demised premises and the property of Lessor.

SECTION FOUR
REPAIRS

Lessee shall, at all times during the lease and at its own cost and expense, repair, replace and maintain in a good, safe and substantial condition the demised premises and shall use reasonable precaution to prevent waste, damage or injury to the demised premises.

SECTION FIVE
UTILITIES AND TAXES

All applications and connections for necessary utilities on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for all utility charges, including but not limited to gas, electricity and telephone services, water, heating costs and costs of snow removal.

SECTION SIX
PERMITS

It shall be the sole responsibility of Lessee to obtain all necessary federal, state and municipal permits such as may be necessary to the occupancy and use of the demised premises by Lessee.

SECTION SEVEN
LEASEHOLD AS SECURITY

Lessor agrees to permit Lessee to pledge the leasehold and/or any fixtures owned by Lessee as security for any loans(s) made by lending institutions, provided, however, that the loan shall be repayed by the end of the lease term and the said loan(s) shall be used solely for the purpose of making leasehold improvements.

SECTION EIGHT
DEFAULT

In the event Lessee shall fail to make rental payments on the due dates specified herein, or shall otherwise fail to comply with the obligations of Lessee under this Agreement at any time during the term of this Agreement, and shall continue to fail to make said rental payments or correct said failure to comply with this Agreement for a period of ten (10) days after receiving notice from Lessor of said default or breach, Lessor may at its option terminate the lease agreement by giving Lessee thirty (30) days written notice of said termination.

SECTION NINE
INSURANCE

Lessee agrees to provide insurance coverage at its own cost for all personal property, building contents, and Lessee-owned fixtures. Lessee further agrees to provide comprehensive liability insurance for the demised premises for its own protection in a reasonable amount given the nature of the contemplated or actual uses of the demised premises, and shall provide Lessor with a copy of said insurance policies if requested by Lessor. Lessee further agrees to obtain and provide any additional policies of insurance or increased amounts of liability coverage as Lessor may request from time to time during the term of this Agreement. Lessor agrees to provide insurance for the land, building structure and Lessor-owned fixtures.

SECTION TEN
RIGHT TO SUBLET

Lessee agrees not to sublet or assign this lease or any portion of the leasehold, other than to a financial institution for purposes of an improvement loan mortgage (Section Seven) without the prior express written consent of a duly authorized agent of Lessor. Said improvement loan mortgage(s), however, shall be subordinate to the interest of Lessor in the demised premises.

SECTION ELEVEN
QUIET ENJOYMENT

Lessor warrants that Lessee shall be granted peaceable and quiet enjoyment of the demised premises free from any eviction or interference by Lessor if Lessee faithfully abides by the terms and conditions of this lease agreement.

SECTION TWELVE
NOTICE

All notices shall be given in writing, and may be made by first-class mail sent to the party and addressed as follows:

LESSOR:

Inhabitants of the Town of Hampden
c/o Town Manager
Hampden Town Office
Hampden, ME 04444

or at such other place as Lessor may designate in writing

LESSEE:

Bion Foster
P.O. Box 287
Hampden, ME 04444

or at such other place as Lessee may designate in writing

Witness our hands and seals this 17th day of March, 1983.

Witness:

Marie G. Baker

INHABITANTS OF THE TOWN OF HAMPDEN

By

[Signature]
Its Treasurer duly authorized
Lessor

KIWANIS CLUB OF HAMPDEN

By

[Signature]
Its President duly authorized
Lessee

MEMORANDUM OF LEASE

Lessor: Inhabitants of the Town of Hampden
c/o Town Manager
Hampden Town Office
Hampden, ME 04444

Lessee: Kiwanis Club of Hampden
c/o Bion Foster
P.O. Box 287
Hampden, ME 04444

Date of Lease: March , 1983.

Term of Lease: June 1, 1983 to May 31, 2008.

Options of Renew: None.

Property Description: The premises situated in the Town of Hampden, County of Penobscot and State of Maine and more particularly described as Parcel Two in the deed of School Administrative District No. 22 to The Inhabitants of the Town of Hampden, dated April 20, 1969, recorded in Penobscot Registry of Deeds, Vol. 2183, Page 31.

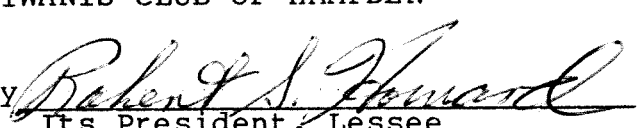
INHABITANTS OF THE TOWN OF HAMPDEN

Dated: March 17, 1983

By 
Its Treasurer, Lessor

KIWANIS CLUB OF HAMPDEN

Dated: March 17, 1983

By 
Its President, Lessee

STATE OF MAINE

Penobscot, ss.

March 17, 1983

Personally appeared the above named R. Lewis Bone, Treasurer of the Town of Hampden, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said municipal corporation, and a true and accurate memorandum of the lease agreement described hereinabove.

Before me,


Notary Public--Justice of the Peace